THE BROWN ACT:

What You Need To Know About Open Meetings For Local Legislative Bodies

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Intent of the Brown Act

- Act openly
- Deliberate openly
- The people do not yield sovereignty § 54950

A Local Agency Includes:

- o A city
- A county
- A school district
- O A board
- A commission
- O An agency thereof § 54951

A Legislative Body Is:

O The Governing Body

Other Bodies of a Local Agency, whether:

A Legislative Body Is: (cont'd.)

- a permanent
- b temporary
- c decision making
- d advisory
- e created by ordinance

§ 54952

- f created by resolution
- g created by formal action
- h standing committee with continuing jurisdiction
- i standing committee with fixed meetings
- j certain other bodies

Exception to the Definition of a Legislative Body

 Advisory Committees of less than a quorum (unless they are Standing Committees)
 § 54952

• Note: Unseated elected members must comply with the Act. § 54952.1.

Copies of the Brown Act Section 54952.7

What is a Meeting?

- A congregation of a majority of members.
- At the same time and place.
- To hear, discuss or deliberate on something within their jurisdiction.
- And including indirect communication (serial meetings) to develop a collective concurrence. § 54952.2

Gatherings Exempt from the Brown Act

- O Individual contacts with a member.
- O Individual contact with an employee or official of the legislative body in order to answer questions or provide information.
- O Provided, that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

Gatherings Exempt from the Brown Act

- Attendance at a conference or similar gathering if:
 - a it's open to the people
 - b it involves issues of interest to the public
 - c members don't discuss business in their jurisdiction except as part of the scheduled program

§ 54952.2

Gatherings Exempt from the Brown Act (cont'd.)

- Attendance of a majority at an open and publicized meeting not organized by the agency if:
 - a it's regarding a topic of local concern
 - b the members don't discuss business within their jurisdiction unless the discussion is part of the scheduled program

Gatherings Exempt from the Brown Act (cont'd.)

- Attendance of a majority at an open and noticed meeting of another body of the local agency or of another legislative body [provided they don't discuss agency business].
- Attendance of a majority at a purely social or ceremonial occasion [provided they don't discuss agency business].

Gatherings Exempt from the Brown Act (cont'd.)

 Attendance as observers only at an open and noticed standing committee meeting.

Definition of Action

- A collective decision of a majority.
- A collective commitment or promise of a majority.
- An actual vote by a majority sitting as a body or entity.
 - § 54952.6

Open and Public Meetings

- All meetings shall be open and public except as provided.
- Secret ballots are prohibited.§ 54953

Teleconferenced Meetings

- O Meetings where members are in different locations connected electronically by video, audio or both.
- O Specific procedures are required.
 - Votes must be by roll call
 - Agendas must be posted at all locations
 - The statutory and constitutional rights of parties and the public must be protected

Teleconferenced Meetings (cont'd.)

- Notices and agendas must identify all locations
- All locations must be accessible to the public
- At least a quorum must be located within the agency's boundaries
- All locations must provide for members of the public to address the body

Grand Jury Testimony

 May be given in private by individual members or by an entire body.

§ 54953.1

Accommodations Under The ADA

 All public meetings must provide for ADA accommodations.

§ 54953.2

No Conditions to Attendance by the Public

- O Registration is not required.
- Attendance or registration lists must state signing is voluntary.
 § 54953.3

Right to Record

- By audio or video or motion camera recording unless persistent disruption results.
- Recordings made by the agency are public records but may be destroyed 30 days after recording.
- Inspection of video or tape recordings must be provided for without charge.
- § 54953.5

Right to Broadcast

 Cannot be restricted unless there is finding that it results in persistent disruption.

§ 54953.6

Documents Given to Legislative Body at Open Meetings

- O Writings available to public.
- Available in alternative formats for persons with disabilities.
- Available at meetings prepared by agency.
- Available after meetings prepared by other.
- Not available if PRA exempt.54957.5

Greater Access to Meetings

- Legislative bodies may allow for greater access.
- O Legislative bodies may impose greater access on bodies they appoint.

§ 54953.7

Clearing of Meeting Room

- Willful interruptions.
- Orderly conduct of meetings unfeasible.
- Removal of disruptive individuals.
- Removal of everyone except "good" media.

54957.9

Time and Place of Meetings

- Must establish regular meetings by ordinance, resolution, bylaw or other rule.
- O Within the boundaries of the body unless:
 - to comply with state or federal law
 - to attend a judicial or administrative proceeding
 - to inspect real or personal property

Time and Place of Meetings (cont'd.)

- to participate in meetings or discussions with multiagency significance
- to meet in the closest meeting facility if the agency lacks a facility
- to meet at the agency's principal office
- to discuss issues affecting the agency with elected or appointed officials of the United States or the State

Time and Place of Meetings (cont'd.)

- to meet in or near a facility owned by the agency if the topic is the facility
- to visit legal counsel for closed session or pending litigation
- special exceptions apply to school districts
- Joint Powers Agency meetings
- in an emergency § 54954

Meetings in Facilities Prohibited

- O Discrimination.
- Inaccessible to disabled.
- O Requires payment.

54953, 54953.2 & 54961

Requirement to Mail Notice to Requesting Parties

- O Upon written request the agenda and backup materials must be timely mailed to a person.
- The written request is valid for one calendar year.
- The body may establish a fee not exceeding the cost of providing the service.
- Alternate agenda packets must be available if requested as required by the ADA.

Agenda Content and Posting Requirements

- Agenda must state who to ask for an alternate agenda as required by the ADA.
- O Post 72 hours before a regular meeting.
- A brief general description of each item, including closed session items.
- No action can be taken on unposted matters except:
 - a to respond to the public's statements or questions
 - b to ask a question

Agenda Content and Posting Requirements (cont'd.)

- c to make a brief announcement
- d to make a brief report on member's activities
- e to provide a referral to staff
- f to take action to direct staff to place a matter on the agenda § 54954.2

Exceptions Allowing Action On Unposted Items

- Action may be taken if the item is publicly identified and:
 - a a majority vote finds an emergency; or
 - b a two-thirds vote or an unanimous vote determines a need to take immediate action identified after the agenda posting; or
 - c the item was continued from an item which was posted no more than five days before § 54954.2

Public Opportunity to Address the Body

O FOR REGULAR MEETINGS

- on every regular meeting agenda
- before or during consideration of the item....

Exception- if a committee of members considered the item

• FOR SPECIAL MEETINGS

- for any item on the special meeting notice
- before or during consideration § 54954.3

Meetings May Be Adjourned

- O To a time & place specified in the order.
- O Less than a quorum may adjourn.
- If no members are present the secretary of the body may adjourn to a time & place specified.
 - the secretary must give notice as for a special meeting

Meetings May Be Adjourned (cont'd.)

- The adjournment order must be posted within 24 hours on the door.
- Hearings may be continued or recontinued by the same process.
- For continuances or recontinuance of less than 24 hours, immediate notice must be posted.

§§ 54955 & 54955.1

Special Meetings

- O Presiding officer can call.
- O Majority of members can call.
- o 24-hour notice to be <u>received</u> by:
 - members
 - media having requested it
- Post notice in a location freely accessible to the public.
- Notice to identify time, place & business.
 § 54956

Emergency Meetings

- Allowed where prompt action is necessary due to disruption of public facilities.
 - without 24-hour notice
 - in an emergency where the majority finds emergency severely impairs public health, safety or both
 - in a dire emergency including mass destruction or threatened terrorist act that poses so immediate and significant a peril as to warrant not even one hour notice
 - one hour telephone notice to the media or in a dire emergency notice at or near notice given to members

Emergency Meetings (cont'd.)

- all telephone numbers must be exhausted, unless telephones aren't functioning
- if advance notice is not possible, notice must be given as soon after as possible
- except as noted, special meeting notice requirements apply
- closed session is permitted if authorized by two thirds of members or all present if less than two thirds are present
- minutes and other information must be posted for ten days as soon after the meeting as possible § 54956.5

Closed Sessions - General

- Authority for closed sessions narrowly construed.
- No general exemptions for quasi-judicial deliberations.
- No Semi-Closed Meetings.
- Closed sessions must be expressly authorized by statute.

Authorized Closed Sessions

- Local agency health plans member complaint.
- Hospital district trade secrets.
- Hospital audits & quality assurance committees.
- Health care service plan governed by county board of supervisors.
- Health plan board actions regarding contracts and rates of payment.
- Early withdrawal of employee deferred compensation for hardship.
- Conference to discuss draft confidential final Bureau of State Audits' report.

Authorized Closed Sessions (cont'd.)

- Licensee with criminal record.
- Multijurisdictional drug law enforcement agency.
- Conference involving a JPA to receive, discuss and take action regarding information from the JPA's closed session.
- Insurance pooling JPA or member may hold closed session to discuss claim for:
 - Tort liability losses
 - Public liability losses
 - Workers' compensation liability
- O Purchase or sale of specific pension fund investments. 54954.5 & 54956.75 through 54957.8

Security Threat Exception

- Threat to security of public buildings.
- Security of essential public services.
- O Access to public services or facilities.
- May meet with AG, DA, Counsel, Sheriff, Chief of Police, or Security Consultant.

54957

Consider Personnel Actions

- Appointment
- O Employment
- Evaluation of performance
- Discipline
- Dismissal
- O Purpose
 - To avoid undue publicity or embarrassment
 - To allow full and candid discussion of employees

54957

Consider Personnel Actions (cont'd.)

- O Hear complaints or charges.

 Written notice of right to open session delivered 24 hours before meeting. If no notice, Board action may be void.
- Not elected officials, members of legislative bodies, or independent contractor.
- No action on proposed compensation.

Conference with Labor Negotiators

- O Identify representative in open session.
- Instruct designated representatives.
 - May discuss available funds and funding priorities
 - 54957.6

Conference with Labor Negotiators (cont'd.)

- Discussion items for represented employees.
 - Salaries
 - Salary Schedule
 - Fringe Benefits
 - Other Matters Within Scope of Representation
 - 54957.6

Conference with Labor Negotiators (cont'd.)

- Discussion items for unrepresented employees.
 - Salaries
 - Salary Schedules
 - Fringe Benefits
 - May <u>not</u> take final action on proposed compensation

54957.6

Conference with Real Property Negotiators

- Open session disclosure
 - Negotiators
 - Real property
 - Persons to negotiate with 54956.8

Meet with Negotiator re Purchase, Sale, Exchange or Lease

- Regarding price
- O Regarding terms of payment 54956.8

Pending Litigation

- O When Closed Session is Appropriate:
 - When attorney present in person or by teleconference
 - Includes adjudicatory proceedings
 - Existing litigation subd. (a). Must be a party
 - Significant exposure to litigation subd. (b)
 - Deciding to initiate litigation subd. (c)
 54956.9

Public Announcement Re Closed Session for Pending Litigation

- Announce authorizing subdivision.
- O Initiation of litigation nothing further.
- O Existing litigation identify litigation, unless:
 - Jeopardize settlement negotiations
 - Jeopardize service of process
 54956.9

Significant Exposure to Litigation – Existing Facts and Circumstances

- Not known to Plaintiff no disclosure required.
- O Known to Plaintiff must disclose.
- O Written communication threatening litigation must be available.
- Statement in public meeting no further information required.
- O Statement outside public meeting written record made and available.

54956.9

Procedure for Holding Closed Session

- Agenda description
 Must include closed session items.
- Safe harbor description
 No violation if these used.
 54954.5

- Conference with Real Property Negotiators
 - Property
 - Agency Negotiator
 - Negotiating Parties
 - Under Negotiation
 - 54954.5

Personnel Matters

Threat to Public Services or Facilities

Public Employee Appointment

Title

Public Employment

Title

Public Employee Performance Evaluation

Title

Public Employee Discipline/Dismissal/Release

54954.5

- Conference with Labor Negotiators
 - Agency DesignatedRepresentatives
 - Employee Organization
 - Unrepresented Employee

54954.5

O Conference with Legal Counsel – Existing Litigation

Gov't Code § 54956.9, subd. (a)

- Name of case
- Case name unspecified 54954.5

- Conference with Legal Counsel –
 Anticipated Litigation.
 - Initiation of litigation –
 § 54956.9, subd. (c).
 Specify number of potential cases
 54954.5

- Conference with Legal Counsel –
 Anticipated Litigation.
 - Significant exposure to litigation,
 \$ 54956.9, subd. (b)
 Specify number of potential cases
 Additional information, if necessary
 54954.5

- O Public disclosure prior to closed session. 54956.9 & 54957.7
- O Consider matters announced.
- O Minute book. 54957.2
 - Discretionary: topics discussed and decisions made
 - Confidential: Not a public record
- O Public report of action taken.

54957.1

Action and Vote to be Reported

- Real estate approval of agreement concluding negotiations.
- O Litigation:
 - Defend
 - Seek appellate review or not
 - Amicus curiae
 - Initiate or intervene in an action
- Settlement of litigation approval of settlement.

54957.1

Action And Vote To Be Reported (cont'd.)

- Affecting employment status:
 - actions to appoint, employ, dismiss, accept resignation, affect employment status.
 - specify title of position.
 - may defer report of dismissal.
- Labor negotiations approval of agreement concluding negotiations.
- Pension fund investment transaction decisions after close of investment transaction or after transfer of pension fund assets.
- Oral or written.
- O Copies of contracts provided.
- Amendments requiring retyping. 54957.1

Confidentiality of Closed Session

- Disclosure of closed session confidential information prohibited.
- Legislative body may authorize disclosure.
- Remedies for Violations:
 - Injunctive relief
 - Disciplinary action
 - Referral to grand jury

Confidentiality of Closed Sessions (cont'd.)

- •Not a violation to:
 - Express opinion about legality of actions taken in closed session.
 - Make confidential complaint to district attorney or grand jury about perceived violation of law.
 - Make disclosure under whistleblower statute.

Brown Act Violations

Misdemeanor to Take Action 54959

Lawsuit Regarding Violations 54960

Lawsuits to Declare Actions Null and Void

- Violation of open meetings, agenda item descriptions, call and holding of regular special and emergency meetings provisions.
- O Demand to cure or correct.

54960, 54960.1

Lawsuits to Declare Actions Null and Void (cont'd.)

- Action not void
 - Substantial compliance
 - Evidence of indebtedness
 - Contractual obligations
 - Collection of tax
 - Actual timely notice 54960.1

Questions?